

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
January 10, 2018**

In attendance: Don Marshall, Chairperson; and Commission Members John Riggs, Joel Sherman, Dr. Karla Rhay, Lilia Garcia-Brower, and Dante Robinson.

Others present: George Mueller, Deputy Commissioner (DC), Enforcement Branch, California Department of Insurance (CDI); Eric Charlick, Assistant Chief (AC), CDI Enforcement Branch; Patricia Hein, Senior Staff Counsel, CDI Legal Division; and Michael Levy, Deputy General Counsel (DGC), CDI Legal Division.

Opening Remarks

Chairperson Marshall opened the meeting at 10:35 am and asked the Commissioners if they wished to make opening comments.

Commissioner Riggs commented that he has reflected on the changes over the past few years in the prosecution of those breaking the law and expressed his appreciation of the job being done to fight insurance fraud.

None of the other Commission Members had remarks.

Chairperson Marshall introduced Patricia Hein, Senior Staff Counsel of the Legal Division and the meeting was turned over to Ms. Hein to proceed with the election of the Fraud Assessment Commission (FAC) Chair and Vice-Chair.

Election of the FAC Chair and Vice-Chair

Patricia Hein read aloud the basic rules that govern the election process. The FAC Chair and Vice-Chair will serve through January, 2019. Ms. Hein then asked each Commission Member if they intended to run for Chair.

Chairperson/Commissioner Don Marshall indicated that he would like to run for Chair. The remaining Commission Members declined to run for the position.

Ms. Hein then requested that Commissioner Marshall introduce himself and his platform regarding the Chair position for the upcoming year.

Commissioner Marshall conveyed that he has been a Commissioner for a long time and knows each of the Commissioners and that the Governor has picked great workers' compensation experts. He further expressed that he sees the changes that have been made and the changes that are proposed as having a significant positive impact.

Public Comment

Ms. Hein opened the floor to the public for questions or comments. There being none, Ms. Hein took a roll call vote.

Vote

The vote was unanimous that Chairperson Marshall continues as Chair for the upcoming Program year. Chairperson Marshall thanked everyone.

Ms. Hein then asked each Commission Member if they intended to run for Vice-Chair.

Commissioner John Riggs indicated that he would like to run for Vice-Chair. The remaining Commission Members declined to run for the position.

Ms. Hein then requested that Commissioner Riggs introduce himself and his platform regarding the Vice-Chair position for the upcoming year.

Commissioner Riggs conveyed that he considers it an honor to be part of the Commission and highlighted his qualifications, experience, dedication, and visibility that are of value to the Program.

Public Comment

Ms. Hein opened the floor to the public for questions or comments. There being none, Ms. Hein took a roll call vote.

Vote

The vote was unanimous that Chairperson Riggs serve as Vice-Chair for the upcoming Program year.

Approval of the Summary Meeting Minutes

Motion

Commissioner Robinson made a motion to accept the summary minutes as submitted for the FAC Meeting on September 7, 2017. Commissioner Riggs seconded the motion.

Action

The FAC unanimously approved the summary meeting minutes.

FAC Goals and Objectives

Chairperson Marshall referred to a draft version of the FAC Goals and Objectives of the Workers' Compensation Insurance Fraud Program for Fiscal Year (FY) 2018-19, which aligns with the goals and objectives of the Insurance Commissioner. Chairperson Marshall asked for comments from the Commissioners.

Commissioner Robinson expressed that he had no changes.

Commissioner Garcia-Brower expressed concern over how the goals and objectives are applied. She commented on instances where the criminal was convicted but then reinvented himself in other counties. She posed the questions (1) how do we look beyond and create sustainable accountability and deterrents, and (2) are we looking at who is funding the perpetrator. Commissioner Garcia-Brower asked the District Attorneys (DAs) to consider how we should do this – do they have the right tool set or do they need better regulations? Commissioner Garcia-Brower further commented that, as Commissioners, it is their responsibility to raise the question.

Chairperson Marshall commented that penalties are often not a sufficient deterrent and that a subcommittee may be needed. There may be another way but we haven't really looked to see. Many offenders know how to work the system.

Commissioner Sherman expressed that he worked on the sub-committee that drafted the current Goals and Objectives.

Motion

Commissioner Sherman made a motion to accept the FAC Goals and Objectives for FY 2018-19. Commissioner Rhay seconded the motion.

Action

The FAC unanimously approved the FAC Goals and Objectives for FY 2018-19.

FAC Representatives for the Workers' Compensation Grant Review Panel

Chairperson Marshall stated that the distribution of the funds to prosecutors in the State of California lies solely with Insurance Commissioner Jones. The FAC contributes two members to the Insurance Commissioner's review panel of five that makes funding recommendations to the Insurance Commissioner in June.

Chairperson Marshall indicated that he would like to sit on the panel and then asked if any other Commissioners were interested in sitting on the panel. Commissioner Sherman expressed his interest in sitting on the panel and there was no interest expressed by the other Commission Members. Commissioners Marshall and Sherman accepted the positions of review panelist.

Chairperson Marshall confirmed with CDI that all members of the FAC will receive copies of the county applications. AC Charlick responded affirmatively.

Chairperson Marshall announced that the FAC Advice and Consent meeting is scheduled for June 20, 2018.

Subcommittee Update: Request for Application (RFA) Format Revision Recommendations

Chairperson Marshal indicated that the FAC had established a subcommittee consisting of himself and Commissioner Rhay, to participate on a CDI committee to recommend revisions to the RFA. He then asked Commissioner Rhay to provide an update. She commented that there is nothing to report at this time because the CDI committee had decided to wait until the State Auditor's finding were available.

Public Comments

Chairperson Marshall opened the floor for public comments. There being none, he moved to the next agenda item and turned the meeting over to Deputy Commissioner Mueller.

Enforcement Branch Update

DC Mueller started by introducing DGC Michael Levy and acknowledging his efforts with the Workers' Compensation Program Audit; announcing that Hung Le had retired; introducing and announcing the promotions of Eric Charlick to AC of Programs and Shawn Conner to AC of Southern California; and congratulating Chairperson Marshall on his reappointment to the FAC by the Governor.

DC Mueller highlighted outreach activities CDI had participated in, such as, developing a new SIU training program, recruiting efforts that resulted with 130 candidates in background investigation and 27 new hires, and disaster relief outreach.

CDI Annual Report to the FAC

DC Mueller explained that as an outcome of the Workers' Compensation Program Audit, a recommendation was made for CDI and the FAC to meet periodically regarding the content of the annual report and to ensure that the FAC feels it has all the relevant information it needs to make informed decisions. A sample of twenty four charts was provided to the FAC for their review.

Chairperson Marshall asked DC Mueller to see that the FAC members each got a copy of the Audit Report.

The Audit Report and sample charts were made available to the public on the table outside the room.

Chairperson Marshall commented that he would like to have the annual report information sooner so it can be reviewed before the Assessment meeting. He further indicated that the on-going meetings that were recommended may require a subcommittee and that the Commission might consider reviewing at the June 20th FAC meeting.

Commissioner Sherman expressed his agreement to review at the next meeting.

Although not a vote item, all commissioners agreed to have the item added to the agenda for the June 20, 2018, meeting.

Insurance Fraud Programs FY 2018-19

DC Mueller explained that the Audit also recommended the identification of a process to distribute excess funds to DAs, if available. He summarized that process by explaining that in late August, CDI's Budget Division will provide notice of the amount of excess funds that are available. At the September FAC meeting, the FAC Commissioners will decide to use excess funds for offset or distribution to the DAs.

Chairperson Marshall asked for more clarification and DGC Levy addressed the proposed process by explaining that the Insurance Commissioner's Review Panel would identify and recommend who it feels should receive excess funds up to a specific dollar amount or a percentage and then, at its September meeting, the FAC decides to offset or distribute.

Chairperson Marshall commented that in June approximately thirty-five (35) counties will ask for more funding than is available. He then asked if there will be statute challenges to the distribution to the DAs.

DGC Levy indicated that this was a tweak of the process within what the statute allows. There will be a threshold award and a supplemental award provision that, if excess funds

are available, will become available in the second quarter of the next fiscal year. It will be a contingent award if funds are available.

DGC Levy also informed the Commission that CDI was revising the wording in the FY 2018-19 RFA to address the contingent award of excess funds to DAs, if available.

Chairperson Marshall asked if the FAC will have the option to use as offset.

DGC Levy responded that the FAC will have the option to do either—offset FY 2019-20 collections or supplement FY 2018-19 DA awards.

Chairperson Marshall asked if there were any additional questions or comments from the Commission Members and there were none.

Department of Industrial Relations Assessment Collection

DC Mueller then continued and referred to Labor Code Section 62.6 and Insurance Code Section 1872.83. He proceeded to address the Commission regarding the FAC's aggregate assessment for Fiscal Year 2018-19 in the amount of \$67,124,258, which was determined at the FAC Meeting in September 2017. He stated that the CDI's projected offset (i.e., beginning Workers' Comp account balance) for FY 2017-18 would be updated by CDI's budget office in February 2018; then in March 2018, CDI will ask DIR to collect the aggregate assessment from California employers for FY 2018-19, less the projected offset amount.

Insurance Fraud Programs FY 2018-19 (continued) and Grant Review Panel

DC Mueller announced that RFAs would be mailed out February 7, 2018 and that County applications are to be received by 5:00 pm on April 25, 2018. He also stated that the Grant Review Panel meeting will take place on June 6, 2018, at the Enforcement Branch's new location on Del Paso Road near the Sacramento airport. Further, DC Mueller explained that an Informational Meeting would be held as a Webinar on February 21st and that three Workshops would be conducted in Southern, Central, and Northern California.

Administrative Updates

DC Mueller explained that revisions were made to documents that were distributed at the FAC meeting on September 7, 2017. The revisions were necessitated for two reasons. First, two counties inaccurately reported their statistics in the Year End DA Program Reports: Alameda overstated their prosecutions by one and their chargeable fraud by approximately \$120,000 and Orange underreported their chargeable fraud by \$100

million. Accordingly, revisions were made to the Year End DA Program Report Data and the Fraud Division Report to the FAC (page 8). Second, incorrect information was included in the Collaboration section of the Fraud Division Report to the FAC, in the paragraph under the heading “CDI Joint Plan with Counties: Vertical Prosecution” (page 12). The paragraph has been corrected.

The corrected documents were made available to the public on the table outside the room.

DC Mueller then noted to the FAC the Audit recommendation and CDI’s intent to amend its 2018 Recruitment Plan to incorporate CDI’s ongoing efforts to recruit and hire retired local law enforcement officers.

At this point DC Mueller asked the Commissioners if they had any questions or comments and they did not.

The floor was then opened to the public for comment and there was none.

California District Attorney Association (CDAA) Update

Deputy District Attorney (DDA) Dominic Dugo of San Diego County spoke on behalf of the CDAA representative, DDA Scott Tsui of Santa Clara County. DDA Dugo expressed confidence on the part of the DAs to identify opportunities, instances, and topics to look at to improve the Program. DA Dugo highlighted that the funds used for offset include CDI unspent funds and the fines provided by the DAs to the Program.

Chairperson Marshall asked if the funds received from the DAs prosecutions could be moved to a separate bucket. DGC Levy said he would look at the statute.

The floor was opened for public comment.

DDA Michael Silverman of Riverside County commented on the impact to employer of increases in the assessment and stated that the 10% increase 2 years ago was a 0.01% increase to payroll. DDA Silverman also suggested that, if unspent funds were not going to be used for offset, a pro-rata percent of total for those counties not fully funded, could be used to distribute.

Commissioner Sherman commented that, for his employer, the assessment was a negative or decrease, but cumulatively assessments of all categories have increased. He looks at both the individual assessment and cumulative assessment impacts on businesses in California.

There were no further comments from the Commissioners or the public.

Other Business

Chairperson Marshall announced that the next scheduled meeting is June 20, 2018.

Commissioner Garcia-Brower commented that meetings used to be rotated between Northern and Southern California and inquired if the September 2018 meeting could be held at the CDI Inland Empire office in Rancho Cucamonga and consider alternating locations.

Chairperson Marshall asked EBHQ if there was a reason for not rotating and requested that the topic be put on the agenda for discussion at the next meeting.

Closing Comments

Chairperson Marshall then asked the Commission Members for closing remarks.

Commissioner Riggs commented on the need for transparency in the process for assessments and award to spend the funds.

Commissioner Sherman stated he is looking forward to the RFA review process.

There being no other comments, Chairperson Marshall asked for a motion to adjourn the meeting.

Motion

Commissioner Robinson made a motion to adjourn the meeting. Commissioner Garcia-Brower seconded the motion.

Action

The FAC unanimously approved. The meeting adjourned at 11:50 a.m.